

LETTERS

OF

ALBERT GALLATIN,

ON THE

OREGON QUESTION,

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THE OREGON QUESTION.

No. I.

NEW YORK, *January 7, 1846.*

I had been a pioneer in collecting facts and stating the case. The only materials within my reach consisted of the accounts of voyages previously published, (including that of Maurelle, in Barrington's *Miscellanies*,) of the varied and important information derived from Humboldt's *New Spain*, and of the voyage of the *Sutil* and *Mexicano*, the introduction to which contains a brief official account of the Spanish discoveries. The statement of the case was the best I was able to make with the materials on hand, and may be found defective in many respects. Since that time manuscript journals of several of the voyages have been obtained at Madrid. New facts have thus been added; others have been better analyzed, and some errors rectified. Arguments which had been only indicated have been enforced, and new views have been suggested. The subject, indeed, seems to be exhausted; and it would be difficult to add any thing to the able correspondence between the two Governments which has been lately published.

Ministers charged with diplomatic discussions are not, however, in those official papers intended for publication, to be considered as philosophers calmly investigating the questions, with no other object but to elicit truth. They are always, to a certain extent, advocates, who use their best endeavors to urge and even strain the reasons that may be alleged in favor of the claims set up by their Governments; and in the same manner to repel, if not to deny, all that may be adduced by the other party. Such official papers are in fact appeals to public opinion, and generally published when there remains no hope to conclude for the present an amicable arrangement.

But, though acting in that respect as advocates, diplomatists are essentially ministers of peace, whose constant and primary duty is mutually to devise conciliatory means for the adjustment of conflicting pretensions, for the continuance of friendly relations, for preventing war, or for the restoration of peace. It has unfortunately happened that, on this occasion, both Governments have assumed such absolute and exclusive grounds, as to have greatly increased, at least for the present, the obstacles to an amicable arrangement.

It is morally impossible for the bulk of the people of any country thoroughly to investigate a subject so complex as that of the respective claims to the Oregon territory; and, for obvious reasons, it is much less understood by the great mass of the population in England than in the United States. Every where, when the question is between the country and a foreign nation, the people at large, impelled by natural and patriotic feelings, will rally around their Government. For the consequences that may ensue, those who are entrusted with the direction of the foreign relations are alone responsible. Whatever may be the cause, to whomsoever the result may be ascribed, it appears, from the general style of the periodical press, that, with few exceptions, the people, both in Great Britain and in the United States, are imbued with the belief that the contested territory belongs exclusively to themselves, and that any concession which might be made would be a boon to the other party. Such opinions, if sustained by either

Government, and accompanied by corresponding measures, must necessarily lead to immediate collisions, and probably to war. Yet, a war so calamitous in itself, so fatal to the general interests of both countries, is almost universally deprecated, without distinction of parties, by all the rational men who are not carried away by the warmth of their feelings.

In the present state of excitement, an immediate amicable arrangement is almost hopeless; time is necessary before the two Governments can be induced to recede from their extreme pretensions. In the mean while, nothing, as it seems to me, should for the present be done, which might increase the excitement, aggravate the difficulties, or remove the only remaining barrier against immediate collision.

The United States claim a right of sovereignty over the whole territory. The pretensions of the British Government, so far as they have been heretofore exhibited, though not extending to a claim of absolute sovereignty over the whole, are yet such as cannot be admitted by the United States, and, if persisted in, must lead to a similar result.

If the claim of Great Britain be properly analyzed, it will be found that, although she has incidentally discussed other questions, she in fact disregards every other claim but that of actual occupancy, and that she regards as such the establishment of trading factories by her subjects. She accordingly claims a participation in the navigation of the river Columbia, and would make that river the boundary between the two Powers. This utter disregard of the rights of discovery, particularly of that of the mouth, sources, and course of a river, of the principle of contiguity, and of every other consideration whatever, cannot be admitted by the United States. The offer of a detached defenceless territory, with a single port, and the reciprocal offers of what are called free ports, cannot be viewed but as derisory. An amicable arrangement by way of compromise cannot be effected without a due regard to the claims advanced by both parties, and to the expediency of the dividing line.*

An equitable division must have reference not only to the extent of territory, but also to the other peculiar advantages attached to each portion respectively.

From and including Fuca Straits, the country extending northwardly abounds with convenient seaports. From the 42d degree of latitude to those Straits, there is but one port of any importance—the mouth of the river Columbia—and this is of difficult and dangerous access, and cannot admit ships of war of a large size. It is important only as a port of exports. As one of common resort for supplies, or asylum, in case of need, for the numberless American vessels engaged in the fisheries or commerce of the Pacific, it would be almost useless, even if in the exclusive possession of the United States. It must also be observed, that the navigable channel of the river, from its mouth to Puget's island, is, according to Vancouver, close along the northern shore. Great Britain proposes that the river should be the boundary, and that the United States should be content with the possession of the port it offered, in common with herself. It is really unnecessary to dwell on the consequences of such an arrangement. It is sufficient to say that, in case of war between the two countries, it would leave the United States without a single port, and give to Great Britain the indisputable and exclusive control over those seas and their commerce.

The first and indispensable step towards an amicable arrangement consists in the investigation, not so much of the superiority of one claim over the other, as of the question whether there be sufficient grounds to sustain the exclusive pretensions of either Government.

* I allude here only to the compromise proposed by Great Britain. Her actual claim, as explicitly thus stated by herself, to the whole territory, limited to a right of joint occupancy, in common with other States, leaving the right of exclusive dominion in abeyance.

If the claim of the United States to the whole of the contested territory can be sustained against Great Britain, or if the pretensions of this Power can to their full extent be maintained against the United States, it must be, by either party assuming that the other has no opposite claim of any kind whatever, that there are no doubtful and debatable questions pending between the two countries. This, if true and maintained, must necessarily lead to war, unless one of the two Powers should yield what it considers as its absolute right. But, if there be any such debatable questions, the way is still open for negotiations; and both Powers may recede from their extreme pretensions, without any abandonment of positive rights, without disgrace, without impairing national honor and dignity.

It has been asserted that the title of the United States to the whole Oregon territory was maintained by irrefragable facts and arguments. These must be sought for in the correspondence lately published. They consist—first, of the assertion of the ancient claim of Spain to the absolute sovereignty over the whole northwest coast of America as far north as the 61st degree of north latitude. Secondly, of the cumulated proofs which sustain the claims of the United States to the various portions of the territory, (whether in their own right, or as derived from the acquisition of Louisiana and the Spanish discoveries,) and of the refutation of the arguments adduced by the other party. The first mentioned position would, if it could be sustained, be sufficient to prove, and is, as I think, the only one that could prove, the absolute and complete right of the United States to the whole contested territory.

It is undoubtedly true that "Spain considered the northwest coast of America as exclusively her own;" that this claim "had been asserted by her, and maintained with the most vigilant jealousy, ever since the discovery of the American continent, or nearly three centuries, as far north as her settlements or missions extended." There were two ways of examining the soundness of that claim: an investigation of the principles on which it was founded, and an appeal to precedents. The Secretary of State has abstained from discussing the principle; but he has said that the claim of Spain to sovereignty "had never been seriously questioned by any European nation; that it had been acquiesced in by all European Governments." This appears to me the most vulnerable part of his arguments.

The early charters of the British monarchs to the colonies bordering on the Atlantic, extended from sea to sea, from the Atlantic to the Pacific ocean, with the single exception which excluded from the grants the places actually occupied by the subjects of any Christian nation. The right of prior occupancy was recognised; but the general claim of Spain to the sovereignty of the whole coast bordering on the Pacific was utterly disregarded. Had that claim been considered as unquestionable, had it been acquiesced in, it never could have been supposed that, in any case whatever, England could have a right to bestow to her subjects a single foot of land bordering on the Pacific.

Coming down to modern times, the only nations which have set up any claims or attempted any settlements on the Pacific, north of the country actually occupied by the Spaniards, are Russia, Great Britain, and the United States. All three have asserted claims to the northwestern coasts of America, irreconcilable with the universal sovereignty claimed by Spain; Russia and England from the time when their flags first floated along the coast and their subjects landed on its shores; the United States from a similar date, or at least from the time when they acquired Louisiana.

If the right of Spain was absolute and exclusive to the whole, there was no reason why it should not have extended beyond the sixty-first degree of latitude. The right of Russia was founded only on her discoveries and the establishment of some trading factories. She respected the right of Spain only as far as it did

not interfere with her own claim. She has, in fact, extended this more than six degrees further south ; and to this the United States, who had acquired all the rights of Spain, have assented by a solemn treaty. Whatever might be the boundary acquiesced in by Spain, it was not Russia which recognised the claim of Spain ; it was Spain which recognised that her claim was not unlimited. And, let it be also observed, that, since Spain still claimed as far north as the sixty-first degree of north latitude, (the southern limit of the Russian factories when first visited by Spanish navigators,) the United States, if they believed the Spanish rights absolute and exclusive, ought not to have ceded to Russia a country extending more than six degrees of latitude along the shores of the Pacific.

Great Britain contested the exclusive claim of Spain from the year 1778, the date of Cook's third voyage ; and he was the first British navigator that had for more than two centuries appeared on those coasts. This doctrine she has maintained ever since. She did not resist the exclusive claim of Spain by virtue of the Nootka convention, but prior to it. It was on that ground that she imperiously demanded indemnity and restoration for the property and factory of one of her subjects, which had been forcibly taken by the Spanish Government. She even threatened war ; and the Nootka convention was the result of those transactions. Whatever construction may at this time be given to that instrument, it is certain at least that Spain by it conceded a portion of the absolute and sovereign right she had till then asserted ; that she yielded the right of trade with the natives on all that part of the coast lying north of her actual settlements ; and that, by suffering the ultimate right of sovereignty to remain in abeyance, she made that pretension questionable which she had contended could not be called in question.

With respect to the United States, without recurring to former negotiations which were not attended with any result, it is sufficient to advert to the convention between them and Great Britain of the year 1818, concluded prior to the date of the treaty by which they acquired the claims of Spain to the territory north of the 42d degree of north latitude.

The United States at that time distinctly claimed in their own right and independent of the Spanish claims, that the boundary along the 49th parallel, which had been agreed on as that between them and Great Britain from the Lake of the Woods to the Stony Mountains, should be extended to the Pacific. To this division of the territory Great Britain would not accede ; and the provision for a joint occupancy during the next ensuing years was substituted. A clause was inserted that the agreement should not be taken to affect the claims of any other Power or State to any part of the country West of the Stony Mountains. This provision clearly referred to the claims of Russia and Spain. The northern and southern boundaries of the country, which the two contracting parties might claim, were left undefined ; Great Britain probably thought herself bound by the Nootka convention to respect the Spanish claims to the extent provided by that instrument ; the United States could not but recognise those derived from discovery, with which they were at that time but imperfectly acquainted, since their own claims were in a great degree derived from a similar source. But the convention decisively proves that the United States did not acquiesce in the antiquated claim of Spain to the absolute and exclusive sovereignty of the whole country ; since, if they had recognised that prior claim to the whole, they could have had none whatever to any portion of it.

It is therefore undeniable that the assertion of the Spanish claim of absolute sovereignty cannot be sustained by a presumed acquiescence on the part of the only nations which now claim the country. It may perhaps be said that their opposition came too late, and that they neglected too long to protest against the Spanish pretension on the Pacific. No stress will be laid on Drake's voyage,

which had a warlike character. But the British charters to their colonies show that those pretensions were disregarded at a very early date. There was no occasion for opposition or direct denial, with respect to the Pacific, until the attention of other nations was directed towards that remote country. This was neglected because all the commercial nations were, in their attempts to colonize, or to conquer, foreign and till then unexplored regions, attracted by countries far more accessible, and were exclusively engaged in pursuits much more important. The East Indies and the West India Islands offered a vast and lucrative field for commercial enterprise and territorial acquisition. With respect to the continent of America, France, England, and Holland most naturally planted their colonies on the nearest opposite shores of the Atlantic; and they did it in opposition to the pretended claim of Spain, which extended to the whole of America. Although strenuously engaged in extending those colonies westwardly, these, in the year 1754, twenty years only before Cook's third voyage, hardly extended beyond the Mississippi. What immediate interest could then have impelled either France or England to enter a formal protest against the antiquated claim of Spain to a country with which they had never attempted even to trade? And what opportunity had occurred for doing it prior to Cook's voyage?

But, what is still more conclusive, the country in question was equally neglected by Spain herself. Some exploring voyages, few of which are authentic, were indeed made by Spanish navigators; and the claims which may be derived from their discoveries have now been transferred to the United States, so far as discovery alone can give a claim, and no further. But, during more than two centuries that Spain had no competitor on the Pacific, there was on her part no occupancy, no settlement, or attempt to make a settlement. She had some missions on the western coast of the peninsula of California; but her missions or settlements in Northern or New California are of quite recent date; that of the most southern (San Diego) in 1769, and that of the most northern (San Francisco) in 1776, two years only before Cook's arrival at Nootka Sound.

In point of fact, the contested territory had been utterly neglected by Spain. All the energies, such as they were, of her Mexican colonies were much more advantageously applied to the improvement of the vast and rich countries which they had conquered, principally to the discovery and working of the richest and most productive mines of the precious metals as yet known.

Anson's expedition was purely military, and confined to southern latitudes. But the narrative drew the public attention towards the Pacific ocean, and gave a new impulse to the spirit of discovery. Almost immediately after the peace of 1763, voyages were undertaken for that purpose by the Governments of England and France; the Pacific was explored; the Russians on the other hand had, more than thirty years before, ascertained the continuity of the American continent from Behring's Straits to Mount St. Elias. It was then, and not till then, that Spain, or rather the Mexican Government, awakening from its long lethargy, extended its missions to New California. In the year 1774, Perez, with his pilot, Martinez, sailed as far north as the northern extremity of Queen Charlotte's Island, having anchored in Nootka Sound, and, as Martinez asserts, perceived the entrance to Fuca's Straits. New and important discoveries were made by Quadra and Heceta in the year 1775. The sequel is well known.

But on what foundation did the claim of Spain rest? If she had, indeed, an absolute right to the whole country bordering on the Pacific, derived either from natural or international law, or from usages generally recognised, it matters but little, as respects right, whether other nations had acquiesced in, or opposed, her claim. If there was no foundation for that absolute and exclusive right of sovereignty, Spain could transfer nothing more to the United States than the legitimate claims derived from her discoveries.

The discovery gives an incipient claim not only to the identical spot thus discovered, but to a certain distance beyond it. It has been admitted that the claim extends generally, though not universally, as far inland as the sources of rivers emptying into the sea where the discovery has been made. The distance to which the right or claim extends along the sea shore may not be precisely defined, and may vary according to circumstances. But it never can be unlimited; it has never been recognised beyond a reasonable extent. Spain was the first European nation which discovered and occupied Florida. A claim on that account to the absolute sovereignty over the whole of the Atlantic shores as far as Hudson's Bay, or the 60th degree of latitude, would strike every one as utterly absurd. A claim on the part of Spain to the sovereignty of all the shores of the Pacific, derived from her having established missions in California, would be similar in its nature and extent, and equally inadmissible. It cannot be sustained as a natural right, nor by the principles of international law, nor by any general usage or precedent. The claim of Spain rested on no such grounds.

It was derived from the bull of the Pope Alexander VI, which the Spanish monarchs obtained in the year 1493, immediately after the discovery of America by Columbus. By virtue of that bull, combined with another previously granted to Portugal, and with modifications respecting the division line between the two Powers, the Pope granted to them the exclusive sovereignty over all the discoveries made or to be made in all the heathen portions of the globe, including, it must be recollected, all the countries in America bordering on the Atlantic, as well as those on the Pacific ocean. Yet, even at that time, the Catholic Kings of England and France did not recognise the authority of the Pope on such subjects; as evidently appears by the voyages of Cabot under the orders of Henry VII. of England, and of Cartier under those of the King of France, Francis I. Subsequently, the colonies planted by both countries, from Florida to Hudson's Bay, were a practical and continued protest and denial of the Spanish claim of absolute sovereignty over the whole of America; whilst the acquiescence of Spain was tantamount to an abandonment of that claim where it was resisted. Ridiculous as a right derived from such a source may appear at this time, it was not then thus considered by Spain; and the western boundary of Brazil is to this day regulated by the division line prescribed by the Pope.

I am not aware of any other principle by which the claim ever was or can be sustained, unless it be the idle ceremony of taking possession, as it is called. The celebrated Spaniard who first discovered the Pacific ocean, "Balboa, advancing up to the middle in the waves, with his buckler and sword, took possession of that ocean in the name of the King, his master, and vowed to defend it, with his arms, against all his enemies."—(*Robertson.*)

I have dwelt longer on this subject than it may seem to deserve. The assertion of the solidity of this ancient exclusive Spanish claim has had an apparent effect on public opinion fatal to the prospect of an amicable arrangement. I am also fully satisfied that the resort to vulnerable arguments, instead of strengthening, has a tendency to lessen the weight of the multiplied proofs, by which the superiority of the American over the British claim has been so fully established.

No. II.

It has, it is believed, been conclusively proved that the claim of the United States to absolute sovereignty over the whole Oregon territory, in virtue of the ancient exclusive Spanish claim, is wholly unfounded. The next question is, whether the other facts and arguments adduced by either party establish a complete and absolute title of either to the whole: for the United States claim it explicitly; and, although the British proposal of compromise did yield a part, yet her qualified claim extends to the whole. It has been stated by herself in the following words: "Great Britain claims no exclusive sovereignty over any portion of that territory. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy, in common with other States, leaving the right of exclusive dominion in abeyance." And, again: "The qualified rights which Great Britain now possesses over the whole of the territory in question, embrace the right to navigate the waters of those countries, the right to settle in and over any part of them, and the right freely to trade with the inhabitants and occupiers of the same. * * * * It is fully admitted that the United States possess the same rights; but beyond they possess none."

In the nature of things, it seems almost impossible that a complete and absolute right to any portion of America can exist, unless it be by prescriptive and undisputed *actual* possession and settlements, or by virtue of a treaty.

At the time when America was discovered, the law of nations was altogether unsettled. More than a century elapsed before Grotius attempted to lay its foundation on Natural Law and the moral precepts of Christianity; and, when sustaining it by precedents, he was compelled to recur to Rome and Greece. It was in reality a new case, to which no ancient precedents could apply,* for which some new rules must be adopted. Gradually, some general principles were admitted, never universally, in their nature vague and often conflicting. For instance, discovery varies, from the simple ascertaining of the continuity of land, to a minute exploration of its various harbors, rivers, &c.; and the rights derived from it may vary accordingly, and may occasionally be claimed to the same district by different nations. There is no precise rule for regulating the time after which the neglect to occupy would nullify the right of prior discovery; nor for defining the extent of coast beyond the spot discovered to which the discoverer may be entitled, or how far inland his claim extends. The principle most generally admitted was, that, in case of a river, the right extended to the whole country drained by that river and its tributaries. Even this was not universally conceded. This right might be affected by a simultaneous or prior discovery and occupancy of some of the sources of such river by another party; or it might conflict with a general claim of contiguity. This last claim, when extending beyond the sources of rivers discovered and occupied, is vague and undefined; though it would seem that it cannot exceed in breadth that of the territory on the coast originally discovered and occupied. A few examples will show the uncertainty resulting from those various claims, when they conflicted with each other.

The old British charters extending from sea to sea have already been mentioned. They were founded, beyond the sources of the rivers emptying into

* Grotius, however, sustains the right of occupation by a maxim of the Civil Roman Code.

the Atlantic, on no other principle than that of contiguity or continuity. The grant, in 1621, of Nova Scotia, by James the First, is bounded on the north by the river St. Lawrence, though Cartier had more than eighty-five years before discovered the mouth of that river, and ascended it as high up as the present site of Montreal; and the French, under Champlain, had, several years before 1621, been settled at Quebec. But there is another case more important, and still more in point.

The few survivors of the disastrous expedition of Narvaez, who, coming from Florida, did, in a most extraordinary way, reach Culiacan on the Pacific, were the first Europeans who crossed the Mississippi. Some years later, Ferdinand de Soto, coming also from Florida, did, in the year 1541, reach and cross the Mississippi, at some place between the mouth of the Ohio and that of the Arkansas. He explored a portion of the river and of the adjacent country; and, after his death, Moscoso, who succeeded him in command, did, in the year 1543, build seven brigantines or barques, in which, with the residuc of his followers, he descended the Mississippi, the mouth of which he reached in seventeen days. Thence, putting to sea with his frail vessels, he was fortunate enough to reach the Spanish port of Panuco, on the Mexican coast. The right of discovery clearly belonged to Spain; but she had neglected, for near one hundred and fifty years, to make any settlement on the great river or any of its tributaries. The French, coming from Canada, reached the Mississippi in the year 1680, and ascended it as high up as St. Anthony's Falls; and La Salle descended it in 1682 to its mouth. The French Government did, in virtue of that second discovery, claim the country, subsequently founded New Orleans, and formed several other settlements in the interior, on the Mississippi or its waters. Spain almost immediately occupied Pensacola and Nacogdoches, in order to check the progress of the French eastwardly and westwardly; but she did not attempt to disturb them in their settlements on the Mississippi and its tributaries. We have here the proof of a prior right of discovery being superseded, when too long neglected, by that of actual occupancy and settlement.

The French, by virtue of having thus discovered the mouth of the Mississippi, of having ascended it more than fifteen hundred miles, of having explored the Ohio, the Wabash, and the Illinois, from their respective mouths to their most remote sources, and of having formed several settlements as above mentioned, laid claim to the whole country drained by the main river and its tributaries. They accordingly built forts at Le Bœuf, high up the Alleghany river, and on the site where Pittsburg now stands. On the ground of discovery or settlement, Great Britain had not the slightest claim. General, then Colonel Washington, was the first who, at the age of twenty-two, and in the year 1754, planted the British banner on the Western waters. The British claim was founded principally on the ground of contiguity, enforced by other considerations. The strongest of these was, that it could not consist with natural law that the British colonies, with a population of near two millions, should be confined to the narrow belt of land between the Atlantic and the Alleghany Mountains, and that the right derived from the discovery of the main river should be carried to such an extent as to allow the French colonies, with a population of fifty thousand, rightfully to claim the whole valley of the Mississippi. The contest was decided by the sword. By the treaty of peace of 1763, the Mississippi, with the exception of New Orleans and its immediate vicinity, was made the boundary. The French not only lost all that part of the valley which lay east of that river, but they were compelled to cede Canada to Great Britain.

It may, however, happen that all the various claims from which a title may be derived, instead of pertaining to several Powers, and giving rise to conflicting pretensions, are united and rightfully belong to one nation alone. This union,

if entire, may justly be considered as giving a complete and exclusive title to the sovereignty of that part of the country embraced by such united claims.

The position assumed by the British Government, that those various claims exclude each other, and that the assertion of one forbids an appeal to the others, is obviously untenable. All that can be said in that respect is, that if any one claim is alone sufficient to establish a complete and indisputable title, an appeal to others is superfluous. Thus far, and no farther, can the objection be maintained. The argument on the part of the United States in reality was, that the Government considered the title derived from the ancient exclusive Spanish claim as indisputable; but that, if this was denied, all the other just claims of the United States taken together constituted a complete title, or at least far superior to any that could be adduced on the part of Great Britain.

It is not intended to enter into the merits of the question, which has been completely discussed, since the object of this paper is only to show that there remain on both sides certain debatable questions; and that therefore both Governments may, if so disposed, recede from some of their pretensions, without any abandonment of positive rights, and without impairing national honor and dignity.

Although Great Britain seems, in this discussion, to have relied almost exclusively on the right derived from actual occupancy and settlement, she cannot reject absolutely those derived from other sources. She must admit that, both in theory and practice, the claims derived from prior discovery, from contiguity, from the principle which gives to the first discoverer of the mouth of a river and of its course a claim to the whole country drained by such river, have all been recognised to a certain, though not well-defined, extent, by all the European nations claiming various portions of America. And she cannot deny the facts, that (as Mr. Greenhow justly concludes) the sea shore had been generally examined from the 42d, and minutely from the 45th to the 48th degree of latitude, Nootka Sound discovered, and the general direction of the coast from the 48th to the 58th degree of latitude ascertained, by the Spanish expeditions, in the years 1774 and 1775, of Perez, Heceta, and Bodega y Quadra; that the American Captain Gray was the first who, in 1792, entered into and ascertained the existence of the river Columbia and the place where it emptied into the sea; that, prior to that discovery, the Spaniard Heceta was the first who had been within the bay, called Deception bay by Meares, into which the river does empty; that, of the four navigators who had been in that bay prior to Gray's final discovery, the Spaniard Heceta and the American Gray were the only ones who had asserted that a great river emptied itself into that bay, Heceta having even given a name to the river, (St. Roc.) and the entrance having been designated by his own name, (Ensennada de Heceta,) whilst the two English navigators, Meares and Vancouver, had both concluded that no large river had its mouth there; that, in the year 1805, Lewis and Clarke were the first who descended the river Columbia, from one of its principal western sources to its mouth; that the first actual occupancy in that quarter was by Mr. Astor's company, on the 24th of March, 1811, though Mr. Thompson, the astronomer of the British Northwest Company, who arrived at Astoria on the 15th of July, may have wintered on or near some northern source of the river in 52 degrees north latitude; that amongst the factories established by that American company, one was situated at the confluence of the Okanagan with the Columbia, in about 49 degrees of latitude; that the 42d degree is the boundary, west of the Stony mountains, established by treaty between Spain, now Mexico, and the United States; that the 49th degree is likewise the boundary, from the Lake of the Woods to the Stony mountains, established by treaty between Great Britain and the United States; and that therefore the right of the United States, which may be de-

rived from the principle of contiguity or continuity, embraces the territory west of the Stony mountains contained between the 42d and 49th degree of latitude.

Omitting other considerations which apply principally to the territory north of Fuca Straits, where the claims of both parties are almost exclusively derived from their respective discoveries, including those of Spain, it may be rationally inferred from the preceding enumeration that there remain various questions which must be considered by Great Britain as being still doubtful and debatable, and that she may therefore, without any abandonment of positive rights, recede from the extreme pretensions which she has advanced in the discussion respecting a division of the territory. But, although conjectures may be formed, and the course pursued by the Government of the United States may have an influence on that which Great Britain will adopt, it does not belong to me to discuss what that Government may or will do. This paper is intended for the American, and not for the English public; and my attention has been principally directed to those points which may be considered by the United States as doubtful and debatable.

It was expressly stipulated that nothing contained in the conventions of 1818 and 1827 should be construed to impair, *or in any manner affect*, the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky mountains. After the most cool and impartial investigation of which I am capable, I have not been able to perceive any claim on the part of Great Britain, or debatable question, respecting the territory south of Fuca's Straits, but the species of occupancy by the British Fur companies between the year 1813 and October 20th, 1818; and this must be considered in connexion with the restoration of "all territory, places, and possessions whatsoever, taken by either party from the other during the war," provided for by the treaty of Ghent. To this branch of the subject belongs also the question whether the establishment of trading factories with Indians may eventually give a right to sovereignty. My own opinion was expressed in the American counter-statement of the case, dated 19th December, 1826: "It is believed that mere factories, established solely for the purpose of trafficking with the natives, and without any view to cultivation and permanent settlement, cannot, of themselves, and unsupported by any other consideration, give any better title to dominion and absolute sovereignty than similar establishments made in a civilized country." However true this may be in an abstract proposition, it must be admitted that, practically, the modest British factory at Calcutta has gradually grown up into absolute and undisputed sovereignty over a population of eighty millions of people.

The questions which, as it appears to me, may be allowed by the United States to be debatable, and therefore to make it questionable whether they have a complete right to the whole Oregon territory, are:

1st. The Nootka convention, which applies to the whole, and which, though not of primary importance, is nevertheless a fact, and the inferences drawn from it a matter of argument.

2dly. The discovery of the Straits of Fuca.

3dly. North of those straits; along the sea shores, the discoveries of the British contrasted with those of the American and Spanish navigators; in the interior, the question whether the discovery of the mouth and the navigation of one of its principal branches, from its source to the mouth of the river, implies, without exception, a complete right to the whole country drained by all the tributaries of such river; and also the British claim to the whole territory drained by Frazer's river—its sources having been discovered in 1792 by Sir Alexander Mackenzie, factories having been established upon it by the British as early as

the year 1806, and the whole river thence to its mouth having been for a number of years exclusively navigated by British subjects.

It appears to me sufficient generally to suggest the controverted points. That which relates to Fuca's Straits is the most important, and deserves particular consideration.

If Fuca's voyage in 1592 could be proved to be an authentic document, this would settle at once the question in favor of the United States; but the voyage was mentioned in the introduction to the voyage of the *Sutil* and *Mexicano*. This was an official document, published under the auspices of the Spanish Government, and intended to vindicate Spain against the charges that she had contributed nothing to the advancement of geography in those quarters. This negative evidence was confirmed by Humboldt, who says, that no trace of such voyage can be found in the archives of Mexico. Unwilling to adduce any doubtful fact, I abstained from alluding to it in the statement of the American case in 1826. Later researches show that, although recorded evidences remain of the voyages of Gali from Macao to Acapulco in 1584, of the *Santa Anna* (on board of which was, as he says, Fuca himself) from Manilla to the coast of California, where she was captured, in 1587, by Cavendish, and of Vizcaino, in 1602-1603, and even of Maldonado's fictitious voyage, in 1588, yet no trace has been found in Spain or Mexico of Fuca's, or any other similar voyage, in 1692, or thereabout.

On reading with attention the brief account published by Purchas, I will say, that the voyage itself has much internal evidence of its truth, but that the inference or conclusion throws much discredit on the whole. The only known account of the voyage is that given verbally at Venice, in 1596, by Fuca, a Greek pilot, to Mr. Lock, a respectable English merchant, who transmitted it to Purchas.

Fuca says, that he had been sent by the Viceroy of Mexico to discover the straits of Anian, and the passage thereof into the sea, which they called the North Sea, which is *our Northwest Sea*; that between 47 and 48 degrees of latitude he entered into a broad inlet, through which he sailed more than twenty days; and being then come into the North Sea already, and not being sufficiently armed, he returned again to Acapulco. He offered then to Mr. Lock to go into England, and serve her Majesty in a voyage for the discovery perfectly of the Northwest passage into the South Sea. If it be granted that the inlet through which he had sailed was really the same as the straits which now bear his name, that sea into which he emerged, and which he says to be *our Northwest Sea*, must have been that which is now called Queen Charlotte's Sound, north of Quadra and Vancouver's island, in about 51 degrees of latitude. *Our Northwest Sea* was that which washes the shores of Newfoundland and Labrador, then universally known as far north as the vicinity of the 60th degree of latitude. Hudson's Straits had not yet been discovered; and the discovery of Davis's Straits might not be known to Fuca. But no navigator, at that time, who, like him, had sailed across both the Atlantic and the Pacific oceans, could be ignorant that the northern extremity of Newfoundland, which lies nearly in the same latitude as the northern entrance of Fuca's Straits, is situated sixty or seventy degrees of longitude east of that entrance. The only way to reconcile the account with itself is, to suppose that Fuca believed that the continent of America did not, on the side of the Atlantic, extend further north than about the 60th degree, and was bounded northwardly by an open sea, which extended as far west as the northern extremity of the inlet through which he had sailed. It is true, nevertheless, that, between the years 1774 and 1792, there was a prevailing opinion amongst the navigators, that Fuca had actually discovered an inlet leading towards the Atlantic. Prior to the year 1787 they were engaged in seeking

for it; and the Spaniards had, for that purpose, explored in vain the seacoast lying south of the 48th degree; for it is well known that Fuca's entrance lies between the 48th and 49th, and not between the 47th and 48 degrees of latitude, as he had announced.

The modern discovery of that inlet is due to Captain Barclay, an Englishman, commanding the *Imperial Eagle*, a vessel owned by British merchants, but which was equipped at and took its departure from Ostend, and which sailed under the flag of the Austrian East India Company. The British Government, which has objected to the American claim derived from Captain Gray's discovery of the mouth of the river Columbia, on the ground that he was a private individual, and that his vessel was not a public ship, cannot certainly claim any thing in virtue of a discovery by a private Englishman, sailing under Austrian colors. In that case, and rejecting Fuca's voyage, neither the United States nor England can lay any claim on account of the discovery of the straits.

Subsequently, the Englishman, Meares, sailing under the Portuguese flag, penetrated, in 1788, about ten miles into the inlet, and the American, Gray, in 1789, about fifty miles. The pretended voyage of the sloop *Washington* throughout the straits, under the command of either Gray or Kendrick, has no other foundation than an assertion of Meares, on which no reliance can be placed.

In the year 1790, (1791, according to Vancouver,) the Spaniards, Elisa and Quimper, explored the straits more than one hundred miles, discovering the Port Discovery, the entrance of Admiralty Inlet, the Deception Passage, and the Canal de Haro. In 1792, Vancouver explored and surveyed the straits throughout, together with their various bays and harbors. Even there he had been preceded in part by the *Sutil* and *Mexicano*; and he expresses his regret that they had advanced before him as far as the Canal del Rosario.

Under all the circumstances of the case, it cannot be doubted that the United States must admit that the discovery of the straits, and the various inferences which may be drawn from it, are doubtful and debatable questions.

That which relates to a presumed agreement of commissioners appointed under the treaty of Utrecht, by which the northern boundary of Canada was, from a certain point north of Lake Superior, declared to extend westwardly, along the 49th parallel of latitude, does not appear to be definitively settled. As this had been assumed, many years before, as a positive fact, and had never been contradicted, I also assumed it as such, and did not thoroughly investigate the subject. Yet I had before me at least one map, (name of publisher not recollected,) of which I have a vivid recollection, on which the dividing lines were distinctly marked, and expressly designated, as being in conformity with the agreement of the commissioners under the treaty of Utrecht. The evidence against the fact, though in some respects strong, is purely negative. The line, according to the map, extended from a certain point near the source of the river Saguenay, in a westerly direction, to another designated point on another river emptying either into the St. Lawrence or James's Bay; and there were, in that way, four or five lines following each other, all tending westwardly, but with different inclinations northwardly or southwardly, and all extending, from some apparently known point on a designated river, to another similar point on another river; the rivers themselves emptying themselves, some into the river St. Lawrence and others into James's Bay or Hudson's Bay, until, from a certain point lying north of Lake Superior, the line was declared to extend along the 49th degree of latitude, as above stated. It was with that map before me that the following paragraph was inserted in the American statement of December, 1826:

"The limits between the possessions of Great Britain in North America, and those of France in the same quarter, namely, Canada and Louisiana, were determined by commission-

ers appointed in pursuance of the treaty of Utrecht. From the coast of Labrador to a certain point north of Lake Superior those limits were fixed according to certain metes and bounds, and from that point the line of demarcation was agreed to extend indefinitely due west, along the forty-ninth parallel of north latitude. It was in conformity with that arrangement that the United States did claim that parallel as the northern boundary of Louisiana. It has been accordingly thus settled, as far as the Stony Mountains, by the convention of 1818, between the United States and Great Britain; and no adequate reason can be given why the same boundary should not be continued as far as the claims of the United States do extend, that is to say, as far as the Pacific Ocean."

It appears very extraordinary that any geographer or map-maker should have invented a dividing line, with such specific details, without having sufficient grounds for believing that it had been thus determined by the commissioners under the treaty of Utrecht. It is also believed that Douglass's Summary (not at this moment within my reach) adverts to the portion of the line from the coast of Labrador to the Saguenay. Finally, the allusion to the 49th parallel, as a boundary fixed in consequence of the treaty of Utrecht, had been repeatedly made in the course of preceding negotiations, as well as in the conferences of that of the year 1826; and there is no apparent motive, if the assertion was known by the British negotiators not to be founded in fact, why they should not have at once denied it. It may be, however, that the question having ceased to be of any interest to Great Britain since the acquisition of Canada, they had not investigated the subject. It is of some importance, because, if authenticated, the discussion would be converted from questions respecting undefined claims into one concerning the construction of a positive treaty or convention.

It is sufficiently clear that, under all the circumstances of the case, an amicable division of the territory, if at all practicable, must be founded in a great degree on expediency. This of course must be left to the wisdom of the two Governments. The only natural, equitable, and practical line which has occurred to me, is one which, running through the middle of Fuca's Straits, from its entrance to a point on the main situated south of the mouth of Frazer's river, should leave to the United States all the shores and harbors lying south, and to Great Britain all those north of that line, including the whole of Quadra and Vancouver's Island. It would be through Fuca's Straits a nearly easterly line, along the parallel of about $48\frac{1}{2}$ degrees, leaving to England the most valuable and permanent portion of the fur trade, dividing the seacoast as nearly as possible into two equal parts, and the ports in the most equitable manner. To leave Admiralty Inlet and its Sounds to Great Britain, would give her a possession in the heart of the American portion of the territory. Whether from the point where the line would strike the main, it should be continued along the same parallel, or run along the 49th, is a matter of secondary importance.

If such division should take place, the right of the inhabitants of the country situated on the upper waters of the Columbia to the navigation of that river to its mouth, is founded on natural law; and the principle has almost been recognised as the public law of Europe. Limited to commercial purposes, it might be admitted, but on the express condition that the citizens of the United States should in the same manner, and to the same extent, have the right to navigate the river St. Lawrence.

But I must say that, whatever may be the ultimate destinies of the Oregon territory, I would feel great regret in seeing it in any way divided. An amicable division appears to me without comparison preferable to a war for that object between the two countries. In every other view of the subject it is highly exceptionable. Without adverting for the present to considerations of a higher nature, it may be sufficient here to observe, that the conversion of the northern part of the territory into a British colony, would in its effect make the arrangement very unequal. The United States are forbidden by their Constitution to give a

preference to the ports of one State over those of another. The ports within the portion of territory allotted to the United States would of course remain open to British vessels ; whilst American vessels would be excluded from the ports of the British colony, unless occasionally admitted by special acts depending on the will of Great Britain.

No. III.

Beyond the naked assertion of an absolute right to the whole territory, so little in the shape of argument has been adduced, and so much warmth has been exhibited in the discussion of the subject, that it cannot be doubted that the question has now become, on both sides, one of feeling rather than of right. This, in America, grows out of the fact that, in this contest with a European nation, the contested territory is in America and not in Europe. It is identic with the premature official annunciation that the United States could not acquiesce in the establishment of any new colony in North America by any European nation. This sentiment was already general at the time when it was first publicly declared; and now that it has been almost universally avowed, there can be no impropriety in any private citizen to say, as I now do, that I share in that feeling to its full extent. For the Americans, Oregon is or will be home; for England, it is but an outpost, which may afford means of annoyance, rather than be a source of real power. In America all have the same ultimate object in view; we differ only with respect to the means by which it may be attained.

Two circumstances have had a tendency to nourish and excite these feelings. The British fur companies, from their position, from their monopolizing character, from their natural influence upon the Indians, and from that, much greater than might have been expected, which they have constantly had upon the British Government in its negotiations with the United States, have for sixty years been a perpetual source of annoyance and collisions. The vested interests of the Hudson Bay Company are at this moment the greatest obstacle to an amicable arrangement. It is at the same time due to justice to say that, as far as is known, that company has acted in Oregon in conformity with the terms of the convention, and that its officers have uniformly treated the Americans, whether visitors or emigrants, not only courteously, but with great kindness.

If the British colonies on the continent of America were an independent country, or were they placed in their commercial relations, at least with the United States, on the same footing as the British possessions in Europe, these relations would be regulated by the reciprocal interests and wants of the parties immediately concerned. Great Britain has an undoubted right to persist in her colonial policy; but the result has been extremely vexatious, and to the United States injurious. All this is true. But feelings do not confer a right, and the indulgence of excited feelings is neither virtue nor wisdom.

The Western States have no greater apparent immediate interest in the acquisition of Oregon than the States bordering on the Atlantic. These stand in greater need of an outlet for their surplus emigrating population, and to them exclusively will for the present the benefit accrue of ports on the Pacific for the protection of the numerous American ships employed in the fisheries and commerce of that ocean. It is true that in case of war the inhabitants of the Western States will not, if a naval superiority shall be obtained on the Upper Lakes, feel those immediate calamities of war to which the country along the sea shore is necessarily exposed; but no section of the United States will be more deeply affected by the impossibility of finding, during the war, a market for the immense surplus of its agricultural products. It must also be remembered that a direct tax has heretofore been found more productive than the aggregate of all the other internal taxes levied by the General Government; that, in case of war, it must necessarily be imposed; and that, as it must, in conformity with the Constitu-

tion, be levied in proportion to the respective population of the several States, it will be much more oppressive on those which have not yet accumulated a large amount of circulating or personal capital. The greater degree of excitement which prevails in the West is due to other and more powerful causes than a regard for self-interest.

Bordering through the whole of their northern frontier on the British possessions, the Western people have always been personally exposed to those annoyances and collisions already alluded to; and it may be that the hope of getting rid of these by the conquest of Canada has some influence upon their conduct. Independent of this, the indomitable energy of this nation has been and is nowhere displayed so forcibly as in the new States and settlements. It was necessarily directed towards the acquisition of land and the cultivation of the soil. In that respect it has performed prodigies. Three millions of cultivators of the soil are now found between the Lakes and the Ohio, where, little more than fifty years before, save only three or four half Indian French settlements, there was not a single white inhabitant. Nothing now seems impossible to those men; they have not even been sobered by fresh experience. Attempting to do at once, and without an adequate capital, that which should have been delayed five-and-twenty years, and might have then been successfully accomplished, some of those States have had the mortification to find themselves unable to pay the interest on the debt they had contracted, and obliged to try to compound with their creditors. Nevertheless, undiminished activity and locomotion are still the ruling principles; the Western people leap over time and distance; ahead they must go; it is their mission. May God speed them, and may they thus quietly take possession of the entire contested territory!

All this was as well known to the British Government as to ourselves. A public and official declaration by the President of the United States was unnecessary and at least premature. Mr. Rush's correspondence of 1824 bears witness of its unfortunate effect on the negotiations of that year. These feelings had gradually subsided. But whatever may be the cause, the fact that an extraordinary excitement on this subject has manifested itself, and does now exist on both sides, cannot be denied. Time is absolutely necessary in order that this should subside. Any precipitate step now taken by either Government would be attended with the most fatal consequences. That which, if done some years ago, might have been harmless, would now be highly dangerous, and should at least be postponed for the present.

The first incipient step recommended by the Executive is, to give the notice that the convention of 1827 shall expire at the end of one year. This measure at this time, and connected with the avowed intention of assuming exclusive sovereignty over the whole territory, becomes a question of peace or war.

The conventions of 1818 and 1827, whilst reserving the rights of both parties, allowed the freedom of trade and navigation throughout the whole territory to remain common to both; and the citizens or subjects of both Powers were permitted to occupy any part of it. The inconveniences of that temporary arrangement were well understood at the time. The British fur companies had established factories on the banks, and even south of the river Columbia, within the limits of that portion of the country which the United States had, whenever the subject was discussed, claimed as belonging exclusively to them. The conditions of the agreement were nominally reciprocal; but, though they did not give, yet they did in fact leave the British company in the exclusive possession of the fur trade. This could not be prevented otherwise than by resorting to actual force; the United States were not then either ready or disposed to run the risks of a war for that object, and it was thought more eligible that the British traders should remain on the territory of the United States, by virtue of a compact and

with their consent, than in defiance of their authority. It is but very lately that the Americans have begun to migrate to that remote country; a greater number will certainly follow; and they have, under the convention, a perfect right to occupy and make settlements in any part of the territory they may think proper, with the sole exception of the spots actually occupied by the British company.

What is, then, the object in view, in giving the notice at this time? This has been declared without reserve by the President: "At the end of the year's notice, should Congress think it proper to make provision for giving that notice, we shall have reached a period when the national rights in Oregon must either be abandoned or firmly maintained. That they cannot be abandoned without a sacrifice of both national honor and interests, is too clear to admit of doubt." And it must be recollected that this candid avowal has been accompanied by the declaration that "our title to the whole Oregon territory has been asserted and, as was believed, maintained by irrefragable facts and arguments." Nothing can be more plain and explicit. The exclusive right of the United States to absolute sovereignty over the whole territory must be asserted and maintained.

It may not be necessary for that purpose to drive away the British fur company, nor to prevent the migration into Oregon of British emigrants coming from the British dominions. The company may, if deemed expedient, be permitted to trade, as heretofore, with the Indians. British emigrants may be treated in the same manner as the other sixty or eighty thousand who already arrive yearly in the United States. They may, at their option, be naturalized, or remain on the same footing as foreigners in other parts of the Union. In this case they will enjoy no political rights; they will not be permitted to own American vessels and to sail under the American flag; the permission to own real property seems, so long as Oregon remains a territory, to depend on the will of Congress. Thus far collision may be avoided.

But no foreign jurisdiction can be permitted, from the moment when the sovereignty of the United States over the whole territory shall be asserted and maintained. To this, all those who reside in the territory must submit. After having taken the decisive step of giving the notice, the United States cannot, as the President justly states, abandon the right of sovereignty without a sacrifice of national honor.

It had been expressly agreed by the convention that nothing contained in it should affect the claims of either party to the territory. The all-important question of sovereignty remained therefore in abeyance. Negotiations for a division of the territory have failed; the question of sovereignty remains undecided, as it was prior to the convention. If the United States exercise the reserved right to put an end to the convention, and if, from the time when it shall have expired, they peremptorily assume the right of sovereignty over the whole, it cannot be doubted that Great Britain will at once resist. She will adhere to the principle she had asserted prior to the Nootka convention, and has ever since maintained, that actual occupancy can alone give a right to the country. She will not permit the jurisdiction of the United States to be extended over her subjects; she will oppose the removal, arrest, or exercise, of any other legal process against her justices of the peace, against any other officers who directly or indirectly act under her authority, against any of her subjects; and she will continue to exercise her jurisdiction over all of them throughout the whole territory. Whatever either Power asserts must be maintained; military occupation and war must necessarily ensue.

A portion of the people, both in the West and elsewhere, see clearly that such must be the consequence of giving the notice. Such men openly avow their opinions, prefer war to a longer continuation of the present state of things, are ready to meet all the dangers and calamities of the impending conflict, and to

adopt at once all the measures which may ensure success. With them, the discussion brings at once the question to its true issue: is war necessary for the object they have in view? Or may it not be attained by peaceable means? It is a question of war or peace, and it is fairly laid before the nation.

But many respectable men appear to entertain hopes that peace may still be preserved after the United States shall have assumed, or attempted to assume, exclusive sovereignty. The reverse appears to me so clear, so obvious, so inevitable, that I really cannot understand on what grounds these hopes are founded.

Is it thought that the President will not, after the assent of Congress has been obtained, (and whether immediately or at the end of this session, is quite immaterial,) give the notice which he has asked Congress to authorize? Or is it supposed that a change in the form, which, in order to avoid responsibility, would give him a discretionary power, could lead to a different result, or be any thing else but a transfer by Congress to the Executive of the power to declare war?

Can it be presumed that when, after the expiration of the term of notice, the convention shall have been abrogated, the President will not assert and maintain the sovereignty claimed by the United States? I have not the honor of a personal acquaintance with him; I respect in him the First Magistrate of the Nation; and he is universally represented as of irreproachable character, sincere, and patriotic. Every citizen has a right to differ with him in opinion; no one has that of supposing that he says one thing and means another. I feel an intimate conviction of his entire sincerity.

Is it possible that any one, who does not labor under a singular illusion, can believe that England will yield to threats and defiance that which she has refused to concede to our arguments? Reverse the case. Suppose, for a moment, that Great Britain was the aggressor, and had given the notice; declaring, at the same time that, at the expiration of the year, she would assume exclusive sovereignty over the whole country, and oppose the exercise of any whatever by the United States: Is there any American, even amongst those who set the least value on the Oregon territory, and are most sincerely desirous of preserving peace, who would not at once declare that such pretension on the part of Great Britain was outrageous and must be resisted?

It is not certainly the interest of Great Britain to wage war against the United States, and it may be fairly presumed that the British Government has no such wish. But England is, as well as the United States, a great, powerful, sensitive, and proud nation. Every effusion of the British press which displays hostility to the United States, produces an analogous sentiment, and adds new fuel to excitement in America. A moment's reflection will enable us to judge of the inevitable effect of an offensive and threatening act, emanating from our Government; an act which throws, in the face of the world, the gauntlet of defiance to Great Britain.

Her claims, and views, as laid down in her statement of December, 1826, remove every doubt respecting the steps she will take.

"Great Britain claims no exclusive sovereignty over any portion of that territory. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other States, leaving the right of exclusive dominion in abeyance. * * * * The pretensions of Great Britain tend to the mere maintenance of her own rights, *in resistance to the exclusive character of the pretensions of the United States.* * * * * These rights embrace the right to navigate the waters of those countries, *the right to settle in and over any part of them*, and the right freely to trade with the inhabitants and occupiers of the same. It is fully *admitted* that the *United States possess the same rights.* But beyond these rights, they possess none. To the interests and establishments which British industry and enterprise have created,

Great Britain owes protection. *That protection will be given, both as regards settlement and freedom of trade and navigation, with every attention not to infringe the co-ordinate rights of the United States."*

Thus, the United States declare that they give notice of the abrogation of the convention with the avowed determination of asserting their assumed right of absolute and *exclusive sovereignty* over the whole territory of Oregon. And Great Britain has explicitly declared that her pretensions were *in resistance* to the *exclusive* character of those of the United States; and that protection will be given, both as regards settlement and freedom of trade and navigation to the interests and establishments which British industry and enterprise have created.

How war can be avoided, if both Powers persist in their conflicting determinations, is incomprehensible. Under such circumstances negotiation is morally impossible during the year following the notice. To give that notice, with the avowed determination to assume exclusive sovereignty at the end of the year, is a decisive, most probably irretrievable, step. "After that period the United States cannot abandon their right of sovereignty without a sacrifice of national honor."

The question of sovereignty has never been decided. Simply to give notice of the abrogation of the convention would leave the question in the same situation; it would remain in abeyance. But, when the President has recommended that the notice should be given with the avowed object of assuming exclusive sovereignty, an act of Congress, in compliance with his recommendation, necessarily implies an approbation of the object for which it is given. If the notice should be given, the only way to avoid that implication and its fatal consequences is to declare, at the same time, that the sovereignty shall not be assumed. But, then why give the notice at all? A postponement is far preferable, unless some other advantage shall be obtained by the abrogation of the convention. This must be examined; and it is necessary to enquire whether any, and what measures may be adopted, without any violation of the convention, that will preserve the rights and strengthen the position of the United States.

No. IV.

The acts which the Government of the United States may do, in conformity with the convention, embrace two objects: the measures applicable to the territory within their acknowledged limits which may facilitate and promote migration; and those which are necessary for the protection of their citizens residing in the Oregon territory.

It is a remarkable fact that, although the convention has not been in force twenty-seven years, Congress has actually done nothing with respect to either of those objects. Enterprising individuals have, without any aid or encouragement by Government, opened a wagon-road, eighteen hundred miles in length, through an arid or mountainous region, and made settlements on or near the shores of the Pacific, without any guaranty for the possession of the land improved by their labors. Even the attempt to carry on an inland trade with the Indians of Oregon has been defeated by the refusal to allow a drawback of the high duties, imposed on the importation of foreign goods absolutely necessary for that commerce. Thus the fur trade has remained engrossed by the Hudson Bay Company; missionaries were, till very lately, almost the only citizens of the United States to be found in Oregon; the United States, during the whole of that period, have derived no other advantage from the convention than the reservation of their rights, and the express provision that these should in no way be affected by the continuance of the British factories in the territory. And, now that the tide of migration has turned in their favor, they are suddenly invited to assume a hostile position; to endure the calamities and to run the chances and consequences of war, in order to gain an object which natural and irresistible causes, if permitted to operate, cannot fail ultimately to attain.

The measures applicable to the territory within the acknowledged limits have generally been recommended by the President. A very moderate appropriation will be sufficient to improve the most difficult portions of the road; and block-houses or other temporary works, erected in proper places and at convenient distances, and garrisoned by a portion of the intended additional force, will protect and facilitate the progress of the emigrants. However uninviting may be the vast extent of prairies, destitute of timber, which intervene between the western boundary of the State of Missouri and the country bordering on the Stony Mountains, it seems impossible that there should not be found some more favored spots where settlements may be formed. If these were selected for military posts, and donations of land were made to actual settlers in their vicinity, a series of villages, though probably not a continuity of settlements, would soon arise through the whole length of the road. The most important place, that which is most wanted, either as a place of rest for the emigrants or for military purposes, is one in the immediate vicinity of the Stony Mountains. Reports speak favorably of the fertility of the soil in some of the valleys of the upper waters, within our limits, of Bear's river, of the Rio Colorado, and of some of the northern branches of the river Platte. There, also, the seat of justice might be placed of the new territory, whose courts should have superior jurisdiction over Oregon. The measures which the United States have a right to carry into effect within the territory of Oregon, in conformity with the convention, are the next object of inquiry.

The only positive condition of that instrument is, that the territory in question shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open to vessels, citizens, and subjects of the two Powers.

For the construction put on this article by Great Britain, it is necessary to recur again to the statement of her claim, as given by herself, and to her own acts subsequent to the convention.

The acts of England, subsequent to the convention of 1818, are to be found in the various charters of the Hudson Bay Company, (observing that some of their most important provisions, though of a much earlier date, stand unrepealed,) and in the act of Parliament of the year 1821, which confirms and extends a prior one of the year 1803. It must also be recollected that, by grants or acts subsequent to the convention, the ancient Hudson Bay Company and the North-west Company of Montreal, have been united together, preserving the name of Hudson Bay Company.

This Company was, and remains, a body corporate and politic, with provisions for the election of a Governor and other officers, who direct its business; and, amongst other powers, the Company is empowered to build fortifications for the defence of its possessions, as well as to make war or peace with all nations or people, not Christian, inhabiting their territories, which now embrace the entire Oregon. By the act of Parliament of 1821, the jurisdiction of the courts of Upper Canada is extended, in all civil and criminal cases, to the Oregon territory; provision is made for the appointment of justices of the peace within the said territory, with a limited jurisdiction, and power to act as Commissioners in certain cases, and to convey offenders to Upper Canada.

It must also be observed, that although the Company is forbidden to claim any exclusive trade with the Indians, to the prejudice or exclusion of any citizen of the United States who may be engaged in the same trade, yet the jurisdiction above mentioned is, by the letter of the act, extended to any persons whatsoever, residing or being within the said territory. The British Plenipotentiaries did, however, explicitly declare, in the course of the negotiations of 1826-1827, that the act had no other object but the maintenance of order amongst British subjects, and had never been intended to apply to citizens of the United States.

It is perfectly clear that, since it has been fully admitted that the United States possess the same rights over the territory as Great Britain, they are fully authorized, under the convention, to enjoy all the rights which Great Britain claims for herself, and to exercise that jurisdiction which she has assumed as being consistent with the convention.

The citizens of the United States have, therefore, at this time a full and acknowledged right to navigate the waters of the Oregon territory, *to settle in and over any part of it*, and freely to trade with the inhabitants and occupiers of the same. And the Government of the United States is likewise fully authorized to incorporate any company or association of men for the purpose of trading or of occupying and settling the country; to extend the jurisdiction of the courts of any of its territories lying within its acknowledged limits, in all civil and criminal cases, to the territory aforesaid; to appoint, within the same, justices of the peace and such other officers as may be necessary for carrying the jurisdiction into effect; and also to make war and peace with the Indian inhabitants of the territory, including the incidental power to appoint agents for that purpose.

On the other hand, it seems to be understood that, so long as the convention remains in force, neither Government shall lay duties in the territory on tonnage, merchandise, or commerce; nor exercise exclusive jurisdiction over any portion of it; and that the citizens and subjects of the two Powers, residing in or removing to the territory, shall be amenable only to the jurisdiction of their own country respectively.

It has been contended by the British Government, that the establishment of any military post, or the introduction of any regular force, under a national flag, by either Power, would be an act of exclusive sovereignty, which could not be

permitted to either, whilst the sovereignty remained in abeyance. Under existing circumstances, it is believed that such an act would be highly dangerous, and prove unfavorable to the United States.

But the establishment, by the United States, of a Territorial Government over Oregon, is also objected to on the same principle. The want of such government appears to be the only serious inconvenience attending a continuance of the convention, and requires special consideration.

The United States have the same right as Great Britain, and are equally bound to protect their citizens residing in the Oregon territory in the exercise of all the rights secured to them by the convention. It has been fully admitted, that these rights embrace the right to settle in and over any part of the territory, and that to be, in all cases whatever, amenable only to the jurisdiction of their own country. The subjects of Great Britain, who are not in the employ of the Hudson Bay Company, are forbidden to trade with the natives; and the company does, in fact, control and govern all the British subjects residing in the territory. This gives a strong guaranty against the violation, by rash individuals, of the rights of the citizens of the United States. Should any of them, however, be disturbed in the exercise of their legitimate rights, and the company should be unable or unwilling to relieve and indemnify them, the United States would be justly entitled to appeal to the British Government for the redress of a violation of rights secured by the convention; for the British Government has preserved a control over the Hudson Bay Company, and does, in fact, through it, govern the British subjects who reside in the territory.

The United States are placed, in that respect, in a very different situation. It is not believed that the General Government is authorized to incorporate, as a political body, a commercial company, with such powers as would give it an efficient control over the private citizens residing in the territory. Such delegation of powers, either by any of the States or by Congress, is wholly inconsistent with our institutions. The United States may, indeed, give to their citizens in Oregon a regular and complete judiciary system; and they may also extend to them, as the British Government has done on its part, the laws of an adjacent territory. But an executive local power is wanted in this case, as it is every where else, under any form of government whatever, to cause the laws to be executed, and to have that general control which is now exercised, through the Hudson Bay Company, by the British Government. There are, besides, various acts of a public, though local nature, such as opening roads, making bridges, erecting block-houses for protection against the natives, providing for the destitute, &c., all which are performed by the Hudson Bay Company, and cannot be accomplished by insulated individuals, bound by no legal association or government.

Whether any measures may be devised, other than a territorial government, that will be sufficient for the purpose intended; whether all the American citizens residing in Oregon might not be incorporated and made a body politic, with powers equivalent to those vested in the Hudson Bay Company, and with the reservation by the General Government of a check or control analogous to that reserved by the Government of Great Britain, are questions worthy of serious consideration. But Great Britain has the same interest as the United States to prevent collision during the continuance of the convention; and it is believed, that, if negotiations should be renewed, with an equal and sincere desire on both sides to preserve friendly relations, there would be no difficulty at this time in coming to an understanding on the subject. It would seem sufficient, that this should be accompanied with provisions, preventing the possibility of the powers exercised by the United States being ever applied to British subjects, and with an explicit declaration, that these powers should never be construed, as an ad-

mission by Great Britain, of any claim of the United States to exclusive sovereignty.

There is another important subject which has not, it is believed, ever been discussed by the two Powers. This is the claim to the ownership of the places settled and improved under the convention. It seems to me that, on the principles of both natural and international law, these rights, to a defined extent, should be respected by each Power respectively, whose sovereignty over the portion of the territory in which such improved settlements may be situated will ultimately be recognised. It appears also that the United States may, in conformity with the convention, and without affecting in any shape the claims advanced by Great Britain, pass a law declaring that they abandon, or grant without warranty, to such of their citizens as shall have made actual and bona fide settlements in any part of Oregon, under the convention, all the rights of, and claims to, the ownership of the soil, on which such settlements shall have been made, which the United States may now or hereafter claim or acquire: limiting and defining the extent of the grant in the same manner as would be done if such grant was absolute; and promising that the title should be confirmed, in case and whenever the sovereignty of the United States was recognised or asserted and maintained.

The prolongation, in 1827, of the convention of 1818, was evidently intended as a temporary measure, since it was made revocable at the will of either party. The plenipotentiaries of the two Powers had been unable to agree on the terms of a definitive arrangement, or even in defining with precision the conditions on which the convention of 1818, might be continued for a determinate period. It will be seen, by reference to the protocols and correspondence, that, although it was generally admitted that neither party ought, during such continuance, to exercise any exclusive sovereignty over the territory, the American Plenipotentiary declined to agree to any convention containing an express provision to that effect, or accompanied by the insertion in the protocol of a declaration for the same purpose by the British Plenipotentiaries. The reason was, not only because an exclusive right over Astoria and its dependencies was claimed by the United States, but, principally, because it was anticipated that, in order to have, in fact, an authority equal to that exercised by the Hudson Bay Company, it would become necessary for the United States to perform acts which the British Government might contend to be forbidden by such express provision or declaration. The consequence was, that the convention recognises some certain rights, and imposes no positive restrictions, but only such as may be supposed to be implied in the clause which declares that nothing contained in it should be construed to impair or affect the claims of either party. The probability that it might become necessary for the United States to establish a territorial or some sort of government over their own citizens was explicitly avowed; the deficiencies of the renewed convention of 1827, and the inconveniences which might ensue, were fully understood; and the continuance of that of 1818, made revocable at will, was agreed on, with the hope that the two Powers would embrace an early opportunity, if not to make a definitive arrangement, at least to substitute for the convention another, defining with precision the acts which both parties should be allowed or forbidden to perform, so long as the sovereignty remained in abeyance.

The inconveniences alluded to have been fairly stated in this paper, and some of the means by which they may be avoided have been suggested. It is not, therefore, on account of the intrinsic value of the convention that its abrogation is objectionable and dangerous. It is because nothing is substituted in its place; it is because, if the two Powers are not yet prepared to make a definitive agreement, it becomes the duty of both Governments, instead of breaking the only

barrier which still preserves peace, to substitute for the existing convention one adapted to the present state of things, and which shall prevent collisions until the question of sovereignty shall have been settled. The inconveniences which were only anticipated have become tangible, from the time when American citizens, whom the United States are bound to protect, began to make settlements in the territory of Oregon. The sudden transition from an agreement, however defective, to a promiscuous occupancy, without any provisions whatever that may prevent collisions, is highly dangerous. When this is accompanied by an avowed determination on the part of the United States, to assume that exclusive sovereignty which Great Britain has positively declared she would resist, war becomes inevitable.

No. V.

It may not be possible to calculate, with any degree of certainty, the number of citizens of the United States who, aided by these various measures, will, within any given period, remove to the territory beyond the Stony Mountains. It is certain that this number will annually increase, and keep pace with the rapid increase of the population of the Western States. It cannot be doubted that ultimately, and at no very distant time, they will have possession of all that is worth being occupied in the territory. On what principle, then, will the right of sovereignty be decided?

It may, however, be asked whether, if this be the inevitable consequence of the continuance of the convention, England will not herself give notice that it shall be abrogated. It might be sufficient to answer that we must wait till that notice shall have been given, and the subsequent measures which England means to adopt shall have been made known to us, before we assume rashly a hostile position. The United States may govern themselves; although they may irritate Great Britain, they cannot control the acts of her Government. The British Government will do whatever it may think proper; but for the consequences that may ensue it will be alone responsible. Should the abrogation of the convention on her part be followed by aggressive measures; should she assume exclusive possession over Oregon, or any part of it, as it is now proposed that the United States should do, America will then be placed in a defensive position; the war, if any should ensue, will be one unprovoked by her, a war purely of defence, which will be not only sustained, but approved, by the unanimous voice of the nation. We may, however, be permitted to examine what motive could impel England, what interest she might have, either in annulling the convention or in adopting aggressive measures.

When it is recommended that the United States should give notice of the abrogation of the convention, it is with the avowed object of adopting measures forbidden by the convention, and which Great Britain has uniformly declared she would resist. But, according to the view of the subject uniformly taken by her, from the first time she asserted the rights she claims to this day, the simple abrogation of her convention with the United States will produce no effect whatever on the rights, relations, and position of the two Powers. Great Britain, from the date at least of Cook's third voyage, and prior to the Nootka convention, did deny the exclusive claim of Spain, and assert that her subjects had, in common with those of other States, the right freely to trade with the natives and to settle in any part of the Northwestern coast of America, not already occupied by the subjects of Spain. The Nootka convention was nothing more than the acquiescence, on the part of Spain, in the claims thus asserted by Great Britain, leaving the sovereignty in abeyance. And the convention between the United States and Great Britain is nothing more or less than a temporary recognition of the same principle, so far as the two parties were concerned. England had, prior to that convention, fully admitted that the United States possessed the same rights as were claimed by her. The abrogation of the convention by her will leave those rights precisely in the same situation as they now stand, and as they stood prior to the convention. It cannot therefore be perceived what possible benefit could accrue to Great Britain from her abrogation of that instrument; unless, discarding all her former declarations, denying all that she has asserted for more than sixty years, retracting her admission of the equal rights of the United States to trade, to occupy, and to make settlements in any

part of the country, she should, without cause or pretext, assume, as is now threatened on the part of the United States, exclusive sovereignty over the whole, or part of the territory. It may be permitted to believe that the British Government entertains no such intention.

It may also be observed, that England has heretofore evinced no disposition whatever to colonize the territory in question. She has, indeed, declared most explicitly her determination to protect the British interests that had been created by British enterprise and capital in that quarter. But, by giving a monopoly of the fur trade to the Hudson Bay Company, she has virtually arrested private efforts on the part of British subjects. Her Government has been, in every other respect, altogether inactive, and apparently careless about the ultimate fate of Oregon. The country has been open to her enterprise at least fifty years; and there are no other British settlements or interests within its limits than those vested in or connected with the Hudson Bay Company. Whether the British Government will hereafter make any effort towards that object cannot be known; but as long as this right to colonize Oregon shall remain common to both Powers, the United States have nothing to apprehend from the competition.

The negotiations on that subject between the two Governments have been carried on, on both sides, with perfect candor. The views and intentions of both parties were mutually communicated, without reserve. The conviction on the part of America that the country must ultimately be occupied and settled by her agricultural emigrants, was used as an argument why, in case of a division of the territory, the greater share should be allotted to the United States. The following quotation, from the American statement of the case of December, 1826, proves that this expectation was fairly avowed at the time :

"12. If the present state of occupancy is urged on the part of Great Britain, the probability of the manner in which the territory west of the Rocky mountains must be settled belongs also essentially to the subject. Under whatever nominal sovereignty that country may be placed, and whatever its ultimate destinies may be, it is nearly reduced to a certainty that it will be almost exclusively peopled by the surplus population of the United States. The distance from Great Britain, and the expense incident to emigration, forbid the expectation of any being practicable from that quarter but on a comparatively small scale. Allowing the rate of increase to be the same in the United States and in the North American British possessions, the difference in the actual population of both is such, that the progressive rate which would in forty years add three millions to these, would, within the same time, give a positive increase of more than twenty millions to the United States. And if circumstances, arising from localities and habits, have given superior facilities to British subjects of extending their commerce with the natives, and to that expansion which has the appearance, and the appearance only, of occupancy, the slower but sure progress and extension of an agricultural population will be regulated by distance, by natural obstacles, and by its own amount."

There was no exaggeration in that comparative view; the superiority of the progressive increase of population in the United States was, on the contrary, underrated. The essential difference is, that migration from the United States to Oregon is the result of purely natural causes, whilst England, in order to colonize that country, must resort to artificial means. The number of American emigrants may not, during the first next ensuing years, be as great as it seems to be anticipated. It will at first be limited by the amount of provisions with which the early settlers can supply them during the first year, and till they can raise a crop themselves; and the rapidity with which a new country may be settled is also lessened where maize cannot be profitably cultivated.

Whether more or less prompt, the result is nevertheless indubitable. The snowball, sooner or later, becomes an avalanche: where the cultivator of the soil has once made a permanent establishment, game and hunters disappear; within a few years the fur trade will have died its natural death, and no vestige shall remain, at least south of Fuca's Straits, of that temporary occupancy, of

those vested British interests, which the British Government is now bound to protect. When the whole territory shall have thus fallen in the possession of an agricultural industrious population, the question recurs, by what principle will then the right of sovereignty, all along kept in abeyance, be determined?

The answer is obvious. In conformity with natural law, with that right of occupancy for which Great Britain has always contended, the occupiers of the land, the inhabitants of the country, from whatever quarter they may have come, will be of right, as well as in fact, the sole legitimate sovereigns of Oregon. Whenever sufficiently numerous, they will decide whether it suits them best to be an independent nation or an integral part of our great Republic. There cannot be the slightest apprehension that they will choose to become a dependant colony; for they will be the most powerful nation bordering on the American shores of the Pacific, and will not stand in need of protection against either their Russian or Mexican neighbors. Viewed as an abstract proposition, Mr. Jefferson's opinion appears correct, that it will be best for both the Atlantic and the Pacific American nations, whilst entertaining the most friendly relations, to remain independent, rather than to be united under the same Government. But this conclusion is premature; and the decision must be left to posterity.

It has been attempted in these papers to prove—

1st. That neither of the two Powers has an absolute and indisputable right to the whole contested territory; that each may recede from its extreme pretensions without impairing national honor or wounding national pride; and that the way is therefore still open for a renewal of negotiations.

2d. That the avowed object of the United States, in giving notice of the abrogation of the convention, is the determination to assert and maintain their assumed right of absolute and exclusive sovereignty over the whole territory; that Great Britain is fully committed on that point, and has constantly and explicitly declared that such an attempt would be resisted, and the British interests in that quarter be protected; and that war is therefore the unavoidable consequence of such a decisive step—a war not only necessarily calamitous and expensive, but in its character aggressive, not justifiable by the magnitude and importance of its object, and of which the chances are uncertain.

3d. That the inconveniences of the present state of things may, in a great degree, be avoided; that, if no war should ensue, they will be the same, if not greater, without than under a convention; that not a single object can be gained by giving the notice at this time, unless it be to do something not permitted by the present convention, and therefore provoking resistance, and productive of war. If a single other advantage can be gained by giving the notice, let it be stated.

4th. That it has been fully admitted by Great Britain that, whether under or without a convention, the United States have the same rights as herself, to trade, to navigate, and to occupy and make settlements in and over every part of the territory; and that, if this state of things be not disturbed, natural causes must necessarily give the whole territory to the United States.

Under these circumstances, it is only asked, that the subject may be postponed for the present; that Government should not commit itself by any premature act or declaration; that, instead of increasing the irritation and excitement which exist on both sides, time be given for mutual reflection, and for the subdual or subsidence of angry and violent feelings. Then, and then only, can the deliberate opinion of the American people on this momentous question be truly ascertained. It is not perceived how the postponement for the present and for a time can, in any shape or in the slightest degree, injure the United States.

It is certainly true that England is very powerful, and has often abused her power, in no case in a more outrageous manner than by the imp rse men of sea-er

men, whether American, English, or other foreigners, sailing under and protected by the American flag. I am not aware that there has ever been any powerful nation, even in modern times, and professing Christianity, which has not occasionally abused its power. The United States, who always appealed to justice during their early youth, seem, as their strength and power increase, to give symptoms of a similar disposition. Instead of useless and dangerous re-creminations, might not the two nations, by their united efforts, promote a great object, and worthy of their elevated situation?

With the single exception of the territory of Oregon, which extends from 42 to 54° 40' north latitude, all the American shores of the Pacific Ocean, from Cape Horn to Behring's Straits, are occupied, on the north by the factories of the Russian Fur Company, southwardly by semi-civilized States, a mixture of Europeans of Spanish descent, and of native Indians, who, notwithstanding the efforts of enlightened, intelligent, and liberal men, have heretofore failed in the attempt to establish governments founded on law, that might ensure liberty, preserve order, and protect persons and property. It is in Oregon alone that we may hope to see a portion of the western shores of America occupied and inhabited by an active and enlightened nation, which may exercise a moral influence over her less favored neighbors, and extend to them the benefits of a more advanced civilization. It is on that account that the wish has been expressed that the Oregon territory may not be divided. The United States and England are the only Powers who lay any claim to that country, the only nations which may and must inhabit it. It is not, fortunately, in the power of either Government to prevent this taking place; but it depends upon them whether they shall unite in promoting the object, or whether they shall bring on both countries the calamities of an useless war, which may retard, but not prevent, the ultimate result. It matters but little whether the inhabitants shall come from England or from the United States. It would seem that more importance might be attached to the fact that, within a period of fifteen years, near one million of souls are now added to the population of the United States by migrations from the dominions of Great Britain; yet, since permitted by both Powers, they may be presumed to be beneficial to both. The emigrants to Oregon, whether Americans or English, will be united together by the community of language and literature, of the principles of law, and of all the fundamental elements of a similar civilization.

The establishment of a kindred and friendly Power on the northwest coast of America is all that England can expect, all perhaps that the United States ought to desire. It seems almost incredible that, whilst that object may be attained by simply not impeding the effect of natural causes, two kindred nations, having such powerful motives to remain at peace, and standing at the head of European and American civilization, should, in this enlightened age, give to the world the scandalous spectacle, perhaps not unwelcome to some of the beholders, of an unnatural and unnecessary war; that they should apply all their faculties, and exhaust their resources, in inflicting, each on the other, every injury in their power, and for what purpose? The certain consequence, independent of all the direct calamities and miseries of war, will be a mutual increase of debt and taxation, and the ultimate fate of Oregon will be the same as if the war had not taken place.

ALBERT GALLATIN.

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